IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE ACTING CHIEF JUSTICE MR.K.S.RADHAKRISHNAN
&
THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

FRIDAY, THE 2ND MARCH 2007 / 11TH PHALGUNA 1928

WA.No. 514 of 2007()

AGAINST THE JUDGEMENT IN WPC.22607/2006 Dated 10/01/2007
.....

APPELLANT:PETITIONER

M/S. VALVOLINE CUMMINS LTD.,
DOOR NO.XII/774 E, PITTAPPILLY ESTATE,
PALACHUVADU ROAD, PADAMUGAL, KOCHI-30.

BY ADV. SRI.VIJAYAN. K.U.
SRI.K.N.SREEKUMARAN

RESPONDENTS: RESPONDENTS
---

1. SALES TAX OFFICER,
KGST 2ND CIRCLE, TRIPPUNITHURA.

2. COMMERCIAL TAX OFFICER,
KVAT 2ND CIRCLE, TRIPUNITHURA.

3. COMMERCIAL TAX OFFICER,
AUDIT ASSESSMENT, COMMERCIAL TAXES, ERNAKULAM.

4. STATE OF KERALA, REPRESENTED BY
SECRETARY TO GOVT., TAXES DEPARTMENT,
THIRUVANANTHAPURAM.

BY SPL.GOVERNMENT PLEADER (TAXES) MR.V.V.ASOKAN

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 02/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.S.RADHAKRISHNAN, Ag.C.J. &
M.N.KRISHNAN, J.

W.A.No.514 of 2007

Dated, this the 2nd day of March, 2007

JUDGMENT

Radhakrishnan, Ag.C.J.

Heard learned counsel on either side.

2. The writ petition was preferred seeking a writ of mandamus directing respondents 2 and 3 to consider the claim of the petitioner to adjust the excess payment as per Ext.P1 return and to quash Ext.P8 order and Ext.P9 notice. Counsel appearing for the appellant brings to the notice of this Court a judgment of the learned Single Judge in W.P.(C) No.31458 of 2005. Reference was also made to Section 11 of the Kerala Value Added Tax Act, 2003.

2. Taking note of the entire facts and circumstances of the case we feel it will be appropriate to give a direction to the third respondent to reconsider the request of the appellant for adjustment of tax paid towards tax due in the light of the judgment of this Court in W.P.(C) No.31458 of 2005. A decision shall be taken in the matter untrammelled by the findings of the

learned Single Judge, after notice to the appellant within a period of two months from the date of receipt of a copy of this judgment. Till such time no coercive proceedings shall be initiated against the appellant.

Writ appeal is disposed of accordingly.

Sd/-
K.S.RADHAKRISHNAN,
Ag.CHIEF JUSTICE.

Sd/-
M.N.KRISHNAN,
JUDGE.

vns

/ true copy /

P.S. to Judge